



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

5W

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,022	12/04/2003	Mark Oliver Simon		6704

7590 09/27/2004
Mark Simon
3343 Birnamwood Dr
Colorado Springs, CO 80920

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT PAPER NUMBER

3711

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,022

Applicant(s)

SIMON, MARK OLIVER

Examiner

Mike Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Treadwell et al. Treadwell et al discloses

a) first, second and third legs; the first and second legs first end portions being secured together to form an inverted "V" and the third leg first end portion being secured to the first and second legs first end portions such that the third leg is presented horizontally when the third leg second end portion engages the tip of the football (fig 1).

Art Unit: 3711

As to claim 2 : Treadwell et al discloses a first and second legs angled away from the first and second legs first position (fig 1). The first and second legs are solid material which would be heavier than the tubular third leg.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treadwell et al as applied to claim 1 and further in view of Ritch. The use of PVC is old in the art. Ritch discloses the use of PVC material. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the use of PVC with the apparatus of Ritch in order to more inexpensively produce the device.

As to claim 4: The diameter of the third leg and the tip contour is a matter of design choice. The specification provides no unexpected results in using a smaller diameter third leg or a tip contour that conforms to the tip of a foot ball. It would have been obvious to one of ordinary skill in the art to have selected an appropriate diameter for the third leg and a tip contour that conforms to the tip of a foot ball in order to increase the control of the player.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treadwell and further in view of Ritch and Official notice. Treadwell discloses the elements of

Art Unit: 3711

claim 5 however it does not disclose the use of PVC and a threaded fitting. The use of PVC is old in the art. Ritch discloses the use of PVC material. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the use of PVC with the apparatus of Ritch in order to more inexpensively produce the device. Official notice is taken that the use of threaded fittings is well known in the art. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent attachment means based on cost and design considerations.

Also,

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Treadwell with respect to claim 1 and further in view of Molettieri. Molettieri discloses a smaller diameter third leg and a third leg that conforms to the tip of a football (fig 1, item 14). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the third leg of Molettieri in order to more securely hold the ball during play.

Claims 6- 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treadwell in view of Official notice. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent attachment means for the legs based on cost and design considerations. Official notice is taken that the use of threaded fittings is well known in the art. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent attachment means based on cost and design considerations.

Art Unit: 3711

As to claim 7 : Treadwell et al discloses a first, second and third legs (fig 1).

As to claim 8 : Treadwell et al discloses a fitting (fig 5, item 12, 20,22,). Treaded attachment means are well known in the art. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent attachment means based on cost and design considerations.

As to claim 9 : Treadwell et al discloses a fitting (fig 5, item 12, 20,22,) with an angle between the first and second legs. The specification provides no unexpected results in using the cited angle. It would have been obvious to one of ordinary skill in the art to have selected any one of several equivalent angles between the legs in order to increase the stability of the device.

As to claim 10 : Treadwell et al discloses three legs substantially the same length (fig 2).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5464209*5553855*5490668*5505445

Michael Chambers
Examiner
Art Unit 3711

September 14, 2004


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700